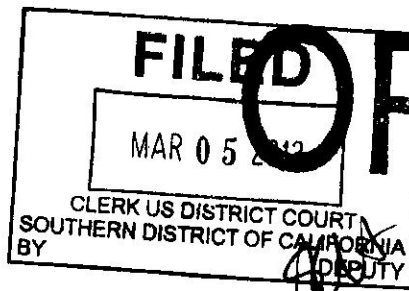


MARLIN PENN 189657
CSP/CAL C2-139
P.O. BOX 5006
CALIPATRIA, CA 92233



IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARLIN PENN,
PETITIONER.

CASE NO. 1:13CV0530 BEN RBB

REQUEST FOR FIREARM
TRACE DATA SYSTEM
RECORDS, PURSUANT TO
5 U.S.C. § 552(a)
(4) (B) FOR JUDICIAL
REVIEW.

V.
U.S. DEPARTMENT OF JUSTICE,
BUREAU OF A.T.F. & E.
DEFENDANTS.

PETITIONER, MARLIN PENN RESPECTFULLY
ASKS THIS COURT FOR JUDICIAL REVIEW IN ACCORDANCE
WITH 5 U.S.C. § 552 (a) (4) (B) OF THE U.S. DEPT.
OF JUSTICE, BUREAU OF A.T.F. & E. FIREARM DATA SYSTEM
RECORDS FOR THE SPECIFIC FIREARM FAULTY USED IN HIS
CRIMINAL TRIAL, CONVICTION & SENTENCE. THE QUESTIONED
FIREARM IS A .25 CAL, PHOENIX ARMS, RAVEN MODEL, SER.
NO. 3022646

THE LOS ANGELES PUBLIC DEFENDER'S OFFICE
PUBLIC INTEGRITY ASSURANCE SECTION ATTORNEY FILED AN
INITIAL REQUEST & AN APPEAL UNDER THE FEDERAL FREEDOM
OF INFORMATION ACT TO THE U.S. DEPT. OF JUSTICE,
REQUESTING FIREARM TRACE DATA HISTORY ON THE SPECIFIC

FIREARM IN QUESTION. THE INITIAL REQUEST & APPEAL WERE DENIED. (SEE EXHIBIT 1).

A FREEDOM OF INFORMATION ACT REQUEST WAS MADE ON BEHALF OF PETITIONER BY THE PUBLIC DEFENDER'S PUBLIC INTEGRITY ASSURANCE SECTION BECAUSE IT IS BELIEVED THAT THE DISTRICT ATTORNEY & TORRANCE POLICE SERGEANT FAULTY USED THIS SPECIFIC FIREARM IN HIS CRIMINAL TRIAL PROCEEDINGS & ALSO THE DISTRICT ATTORNEY'S O.I.S. INVESTIGATION. THIS DISCLOSURE IS REQUESTED IN THE PUBLIC INTEREST BECAUSE POLICE & PROSECUTORIAL MISCONDUCT MAY HAVE OCCURRED & IF SO, AN INNOCENT MAN HAS BEEN CONVICTED OF A CRIME.

THE DENIAL OF THE F.O.I.A. REQUEST HAS DENIED PETITIONER OF A FAIR APPELLATE REVIEW & UPHOLDS THIS UNLAWFUL CONVICTION & SENTENCE. PETITIONER'S STATE & FEDERAL DUE PROCESS, CONSTITUTIONAL & CIVIL RIGHTS HAVE BEEN VIOLATED BY THIS DENIAL.

TORRANCE POLICE SERGEANT GIL KRANKE IS THE ONLY OFFICER WHO TESTIFIED IN PETITIONER'S TRIAL. (YAOZ7213) SGT. KRANKE TESTIFIED THAT THE DAY AFTER MY ARREST, HE & 8-10 UN-NAMED OFFICERS RECOVERED THE .25 CALIBER PHOENIX ARMS, RAVED, SER. NO **3022646** IN A OFFICER INVOLVED SHOOTING INVESTIGATION. TORRANCE POLICE DEPT. HAS NO BOOKING DOCUMENTATION OF THIS SPECIFIC FIREARM & THE CALIF. DEPT. OF JUSTICE, AUTOMATED FIREARM SYSTEM RECORDS ONLY REVEAL THE DATE SHERIFF DEPT. DESTROYED SAID FIREARM (SEE EXHIBIT 2). STATE'S DEPT. OF JUSTICE DOES NOT REVEAL WHICH POLICE AGENCY ACTUALLY RECOVERED & REPORTED THIS FIREARM TO THEIR AGENCY. AN THOROUGH EXAMINATION IS THEREFORE NEEDED TO SUPPORT & UPHOLD THE STATE'S USAGE OF THIS EVIDENCE IN A CRIMINAL TRIAL.

THE Los Angeles County Public Defender's Public Integrity Assurance Section, Attorney Anthony Patti filed a FOIA request & appeal on behalf of Petitioner to the U.S. Dept. of Justice, Office of Information & Privacy, both the initial FOIA request & appeal were denied.

THE A.T.F. & E's records being withheld will conclusively support facts that Petitioner's trial was illegal & District Attorney Ken Lamps knowingly used this falsified firearm in direct violation of state & Federal Constitutional Law.

THE REQUESTED A.T.F. & E's FIREARMS TRACE SYSTEM DATABASE RECORDS ARE BEING UNLAWFUL WITHHELD, THEREFORE PETITIONER SEEKS JUDICIAL REVIEW DE NOVO. THE U.S. DEPT. OF JUSTICE STATES THAT THEIR RECORDS ARE EXEMPT FROM DISCLOSURE, BUT PURSUANT TO CONSOLIDATED APPROPRIATIONS ACT OF 2010, PUB. L. NO. 111-117, 123 STAT. 3128-3129: READS IN PERTINENT PART: THAT SECTION 923(g) OF TITLE 18, UNITED STATES CODE ALLOWS DISCLOSURE IN PART OR ALL THE CONTENTS OF THE FIREARM TRACE SYSTEM DATABASE TO (1) A FEDERAL, STATE, OR LOCAL PROSECUTOR; OR (2) A FOREIGN LAW ENFORCEMENT AGENCY SOLELY IN CONNECTION WITH OR FOR USE IN A CRIMINAL INVESTIGATION OR PROSECUTION; OR (3) A FEDERAL AGENCY FOR A NATIONAL SECURITY OR INTELLIGENCE PURPOSE; --

DISCLOSURE OF THE REQUESTED FOIA INFO TO A FEDERAL ATTORNEY IS IN THE PUBLIC INTEREST BECAUSE PROSECUTORIAL & POLICE MISCONDUCT IS ALLEGED, & IF SO, CHARGES SHOULD BE FILED.

TO AVOID PROSECUTION & DISCLOSURE, THE STATE OF CALIFORNIA HAS ALLEGED THAT DISTRICT ATTORNEY KEL LAMIS & STATE OF CALIFORNIA DEPUTY ATTORNEY GENERAL ANDREW AMERSON ARE DECEASED. PETITIONER DOES NOT BELIEVE EITHER ATTORNEY IS DEAD, BUT THE STATE OF CALIFORNIA IS TRYING TO AVOID DISCLOSURE & PROSECUTION.

TO DENY PETITIONER'S REQUEST FOR JUDICIAL REVIEW ALLOWS THE STATE OF CALIFORNIA TO MISAPPROPRIATE, DEFRAUD & CONVICT INNOCENT MEN OVER & OVER AGAIN WITH THE SAME EVIDENCE. THIS SPECIFIC FIREARM HAS A PAPERTRAIL & OR DOCUMENTED HISTORY, BUT THE STATE'S FAILURE TO DISCLOSE IS PETITIONER'S SOLE REASON FOR REVIEW.

PETITIONER HAS BEEN INCARCERATED FOR OVER 17 YEARS & THE STATE OF CALIFORNIA HAS AVOIDED DISCLOSURE & REVIEW FOR TOO LONG, I THEREFORE PRAY THIS COURT'S REVIEW.

DATED: 2/26/13

GOD BLESS.
MARLON PERAL

EXHIBIT COVER PAGE



Description of this Exhibit:

Number of pages to this Exhibit: 3 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

APR 29 2008

Washington, DC 20226

www.atf.gov

REFER TO: 08-922:JMP

Mr. Anthony J. Patti
Law Offices of Los Angeles County
Public Defender
Public Integrity Assurance Section
312 South Hill Street
Lyons Building, 3rd Floor
Los Angeles, California 90013

Dear Mr. Patti:

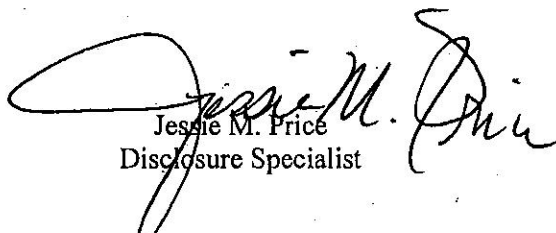
This letter is in response to your Freedom of Information Act (FOIA) request for access to information you believe is maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

The ATF 2005 Appropriation Bill prohibits ATF from expending appropriated funds to disclose to the public the contents or any portion thereof of any information required to be kept by licensees pursuant to Section 923(g) of Title 18, or required to be reported pursuant to paragraphs (3) and (7) of Section 923(g) of Title 18, United States Code (U.S.C.). You have requested records that fall within this restriction. Therefore, your request is denied pursuant to 5 U.S.C. Section 552(b)(3) and the (Consolidated Appropriations Act, 2005, Pub. L. No. 108-447).

Do be advised that ATF performs firearm traces for federal, local, state, and international law enforcement only to assist them in their fight against violent crime. We do not trace firearms for private investigators, or the public at large. You may want to check with your local police to find out whether or not ATF did a trace on the 25 caliber Raven pistol.

Insofar as your request has been denied, you may submit a request for an Administrative Appeal by writing to the Office of Information and Privacy, U.S. Department of Justice, 1425 New York Avenue, Suite 11050, Washington, DC 20530-0001. Your letter of appeal must be received within 60 days from the date of this letter, indicate that your appeal concerns ATF records, and include the "REFER TO" number that appears at the upper right of this letter. Your letter of appeal should state any arguments in support thereof.

Sincerely yours,


Jessie M. Price
Disclosure Specialist



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUN 30 2008

Anthony J. Patti, Esq.
Public Integrity Assurance Section
Lyons Building, 3rd Floor
312 South Hill Street
Los Angeles, CA 90013

Re: Request No. 08-922

Dear Mr. Patti:

This is to advise you that your administrative appeal from the action of the Bureau of Alcohol, Tobacco, Firearms, and Explosives was received by this Office on June 19, 2008.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **08-2057**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written over a horizontal line.

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

AUG 26 2008

Anthony J. Patti
Deputy Public Defender
Lyons Building, 3rd Floor
312 South Hill Street
Los Angeles, CA 90013

Re: Appeal No. 08-2057
Request No. 08-922
JGM:KMR

Dear Mr. Patti:

You appealed on behalf of your client, Marlin A. Penn, from the action of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) on his request for access to records pertaining to a particular firearm. Please be advised that I have also interpreted your letter dated June 19, 2008, as an appeal of ATF's implied denial of your client's request for a fee waiver.

After carefully considering your appeal, I am affirming, on partly modified grounds, ATF's action on your client's request for access to records pertaining to a particular firearm. ATF properly withheld this information in its entirety because it is protected from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(3). This provision concerns matters specifically exempted from release by statute (in this instance, the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, 119 Stat. 2290 (2005), which pertains to the prohibited use of appropriated funds to disclose firearms database information and such data's immunity from judicial process).

In your appeal letter dated June 19, 2008, "[you] request a waiver of all fees for this request." As noted above, I have interpreted your letter dated June 19, 2008, as an appeal of ATF's implied denial of your client's request for a fee waiver submitted with his initial request dated April 15, 2008. Please be advised that because ATF did not assess any fee in this instance, the need for this Office to adjudicate the fee waiver denial as it relates to this request is moot. I am, therefore, closing this portion of your appeal file in this Office.

If your client is dissatisfied with my action on your appeal, he may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Janice Galli McLeod
Associate Director

EXHIBIT COVER PAGE

2
EXHIBIT

Description of this Exhibit:

Number of pages to this Exhibit: 3 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☐ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☒ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916) 227-3530
(916) 227-3589

May 12, 2008

Michael P. Judge, Public Defender
Law Offices of the Public Defender
County of Los Angeles
312 South Hill Street, 3rd Floor
Los Angeles, California 90013

Attention: Deputy Public Defender Anthony J. Patti

The enclosed Certification is in response to an April 01, 2008, request regarding Case Number: YA027213. For your reference we have also enclosed a list of the Automated Firearms Systems Data Field Codes and a list of the Law Enforcement and Historical Record Types. We hope this information will be of assistance as you review the certified document.

If you have any questions please contact Rochell D. Goudeau, Firearms Analyst at (916) 227-3589.

Sincerely,

A handwritten signature in cursive script that reads "Gerri Kaneleos".

GERRI KANELOS, Manager
Custodian of Records
Automated Firearms Systems Unit
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

Enclosure/s

CERTIFICATION

I, Gerri Kanelos, do certify and attest under penalty of perjury that I am the legal custodian of the records stored in the Automated Firearms System, maintained by the Department of Justice, Bureau of Firearms. This file contains records of Dealer's Record of Sale of Revolver or Pistol, and all other firearm records entered by the Department of Justice and law enforcement agencies in California.

On May 12, 2008, a diligent search of the Automated Firearms System was conducted for the Firearm History of the following:

1. A .25 caliber, Phoenix Arms Co., model Raven, serial number 10205. The search revealed no record.
2. A .25 caliber, Phoenix Arms Co., model Raven, serial number 3022646. The search revealed a .25 caliber, PHE Phoenix Arms Co., model Raven, serial number 3022646 was DESTROYED on December, 10, 2002, by the Los Angeles Sheriff's Department.

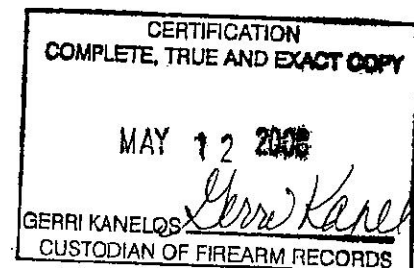
I certify the enclosed document is a complete, true, and exact copy. This certification was prepared by personnel of the Department of Justice in the ordinary course of business on the date stated above.



GERRI KANELOS, Manager
Custodian of Records
Automated Firearms Systems Unit
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

* DESTROYED
SER/3022646 MAK/PHE PHOENIX ARMS CO. CAL/25
TYP/PI PISTOL SEMI-AUTOMATIC MOD/RAVEN
DOT/20021210
ORI/CA0190077 OCA/02CRT994
MIS/LACO SHERIFF CENTRAL PROPERTY
FCN/2320234400888



JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Marlin Penn
D-83659

(b) County of Residence of First Listed Plaintiff Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Marlin Penn
PO Box 5006
Calipatria CA 92233

DEFENDANTS

U.S. Department of Justice, et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

13CV0530 BEN RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)
- ☐ 5 U.S. Government Defendant

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/REALTY	LABOR	SECURITIES	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
05:552

Brief description of cause:
Freedom of Information Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
03/05/2013

SIGNATURE OF ATTORNEY OF RECORD

s/ SKHoestenbach SKHoestenbach

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Myrind Redd D83659
CSO/CA. C2-139
P.O. Box 5006
CALIPATRIA, CA 92233

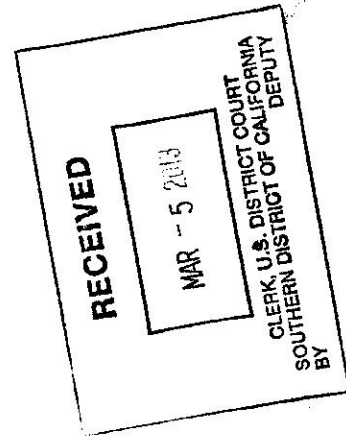
THIS MAIL WAS GENERATED
AT CALIPATRIA STATE PRISON



U.S. District Court
Southern District of California
325 W. F St.
San Diego, CA 92101-6989



LEGAL MAIL



4/7/13



4/11/13